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BEFORE THE
Federal Communications Commission
WASHINGTON, D. C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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In the Matter of)
)
Amendment of Section 73.202(b),) MB Docket No. _____
Table of Allotments,) RM- _____
FM Broadcast Stations)
(Glen Arbor, Michigan))

TO: Assistant Chief, Audio Division
Office of Broadcast License Policy
Media Bureau

PETITION FOR RECONSIDERATION

WKJF Radio, Inc. ("WKJF Radio"), licensee of FM Broadcast Station WJZQ, Channel 225C1 (92.9 MHz), Cadillac, Michigan, hereby respectfully submits this Petition for Reconsideration of the July 5, 2002 letter ruling of John A. Karousos, Assistant Chief, Audio Division, Media Bureau, dismissing WKJF Radio's April 24, 2000 "Petition for Rulemaking to Delete FM Channel" (the "WKJF Petition"). In support whereof, the following is shown:

1. The Assistant Chief's letter, appended hereto, dismisses the WKJF Petition on the grounds that, because George S. Flinn, Jr. has filed a "Petition for Reconsideration" of the dismissal of his defective application (File No. BPH-19970724M4) on Channel 227A at Glen Arbor, Michigan, (the channel which the WKJF Petition sought to delete), "it is Commission policy not to delete an

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FM channel where there is an expression of interest for an allotment or, in this case, where there is an active application on file". The Assistant Chief fails to cite any Commission rule or case precedent to support this position.

2. As it turns out, the Assistant Chief erroneously dismissed the WKJF Petition as a matter of law. In **FM Table of Allotments, Atlantic City, New Jersey**, 50 FR 13791, 57 RR 2d 1436 (Bureau, 1985), the Commission deleted FM Channel 240A from Atlantic City despite the fact that there were four pending applications for the channel¹. As it turned out, all of the four applicants had sought some kind of a waiver of Section 73.207 of the Commission's Rules, as all of them proposed a short-spaced site. The Bureau ruled that it would delete Channel 240A, since "a land based site for Channel 240A is not available that meets the Commission spacing requirements and it was not our intention to allot this channel with a short spacing". *Id.* at ¶8.

3. More recently, the Commission deleted FM Channel 298A from LaFayette, Georgia, despite the fact there was a pending "singleton" applicant for that channel. This was because the use of Channel 298A could not be done at any otherwise permissible site, because of impermissible "intermediate frequency (IM) interference" to FAA

¹The undersigned represented one of the four applicants who were adversely affected by this ruling. Hence, the undersigned has more than a passing interest in seeing some consistency in Commission rulings in this field.

communications facilities. **FM Table of Allotments, LaFayette, Georgia**, 13 FCC Rcd 2093 (1998). Yet another case where a channel was deleted despite having pending applications was **FM Table of Allotments, San Clemente, California**, 10 FCC Rcd 8291 (1995).


4. Therefore, the fact that an application (or a petition for reconsideration of its dismissal) is on file is by precedent no bar to the deletion of an FM channel. The July 5, 2002 letter ruling is therefore "clearly erroneous" as a matter of law and "arbitrary, capricious and irrational", and therefore would be subject to a reversal in the appellate court. 5 U.S.C. §706(2).

WHEREFORE, it is urged that this "Petition for Reconsideration" **BE GRANTED**, and that the Commission **ISSUE** a "Notice of Proposed Rulemaking" accepting comments on the proposal of WKJF Radio, Inc. to delete Channel 227A from Glen Arbor, Michigan.

Respectfully submitted,

WKJF RADIO, INC.

By



Dennis J. Kelly
(D. C. Bar #292631)
Its Attorney

LAW OFFICE OF DENNIS J. KELLY
Post Office Box 41177
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August 5, 2002



Federal Communications Commission
Washington, D.C. 20554

July 5, 2002

Dennis J. Kelly
Law Office of Dennis J. Kelly
Post Office Box 6648
Annapolis, Maryland 21401

Dear Mr. Kelly:

This is in response to the Petition for Rule Making and Request for Immediate Consideration of "Petition for Rule Making to Delete FM Channel" you filed on behalf of WKJF Radio, Inc., licensee of Station WKJF, Cadillac, Michigan, requesting the deletion of Channel 227A at Glen Arbor, Michigan.¹ We have reviewed the proposal and find that it is unacceptable for rule making at this time.

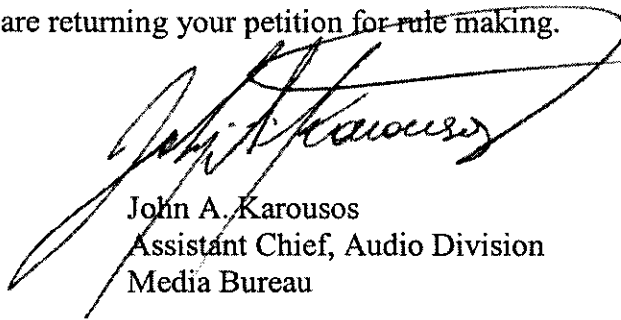
In your petition, you state that it is necessary to relocate Station WKJF from its current site on an antenna owned by Station WWTW(TV), Cadillac, Michigan, to a parcel of land near Fife Lake, Michigan, at coordinates 44-35-41 and 85-11-53. In order to relocate your facilities, you request the deletion of Channel 227A at Glen Arbor, Michigan (44-50-05 and 86-01-55) because of a short spacing between the channel at Glen Arbor and your proposed site. In support of your request, you have stated that much of the area in the Glen Arbor "open area" is located within the Sleeping Bear Dunes National Lakeshore, a federally-administered unit of the National Park System, which would prohibit use of this land for commercial purposes. Therefore, you contend that there are no fully-spaced sites for Channel 227A at Glen Arbor and that the channel should not have been allotted to the community.

According to FCC records, there is an application on file for Channel 227A at Glen Arbor (BPH-19970724M4) which was amended in 1998 for appropriate consideration by the Audio Division. On May 2, 2002, the Commission dismissed both the original application and the amended application for Channel 227A at Glen Arbor, Michigan. However, on June 3, 2002, George Flinn filed a Petition for Reconsideration of the dismissal of his application for Glen Arbor. It is Commission policy not to delete an FM channel where there is an expression of interest for an allotment or, in this case, where there is an active application on file. Records at the FCC also indicate that WKJF Radio, Inc. was granted a construction permit for Channel 225C1, Cadillac, Michigan, under Section 73.215 of the Commission's Rules at coordinates 44-35-41 and 85-11-53 and a license to cover the construction permit was issued on March 14, 2002. Therefore, it appears that it is not necessary to delete Channel 227A at Glen Arbor to accommodate changes for Station WKJF at Cadillac.

¹ On June 3, 2002, George S. Flinn, Jr., by his attorney, filed an Opposition to Request for Immediate Consideration of "Petition for Rule Making to Delete FM Channel".

Based on the above discussion, we are returning your petition for rule making.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Karousos", is written over a large, loopy flourish that extends to the left and right.

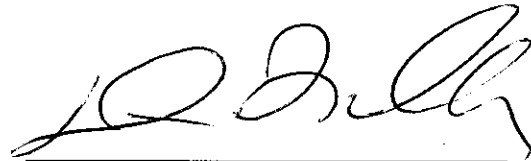
John A. Karousos
Assistant Chief, Audio Division
Media Bureau

Enclosure

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing "Petition for Reconsideration" was served by first-class United States mail, postage prepaid, on this 5th day of August, 2002 upon the following:

Stephen C. Simpson, Esquire
1090 Vermont Avenue, NW, Suite 800
Washington, DC 20005
Counsel for George S. Flinn, Jr.

A handwritten signature in black ink, appearing to read "D. Kelly", written over a horizontal line.

Dennis J. Kelly